

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Appl. No.420 of 2005

Date of decision :-10.8.2005

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 10.8.2005

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No.420 of 2005

1. Vijay Laxmi Thalwal
W/o Purushottam Thalwal
R/o Badahat Bazar
P.S. Uttarkashi
District Uttarkashi
2. Purshottam Thalwal
S/o Inder
R/o Badahat
P.S. Kotwali Uttarkashi Applicants
Versus

1. State of Uttaranchal
2. Judicial Magistrate, Uttarkashi
3. Sessions Judge, Uttarkashi
4. Rupendra Nath Mishra
Pariyojna Nideshak Zila Gramya
Vikas Abhikaran Uttarkashi Respondents

Date:- 10th August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri H. M. Raturi learned counsel for the applicants and learned A.G.A. for the State.

2. This petition under section 482 Cr.P.C. was filed for setting aside the order dated 14.3.2005 in criminal case No.110/2003 under section 406, 407, 420, 466, 468 I.P.C. and order dated 4.6.2005 in criminal revision No.10/2005 passed by Judicial Magistrate, Uttarkashi and the Sessions Judge Uttarkashi respectively.

3. The factual position in a nutshell is that on 29.5.1999 the respondent No.4 lodged an FIR against the applicants at P.S. Dharasu District Uttarkashi with the allegations that Rs.20,000/- was given to the applicants from the Parliamentary quota through District Village Development Abhikaran for village panchayat Gandoli Vikas Khand Chinyali on 31.3.1998 and

Rs.60,000/- was given under Jawahar Rojgar Yojna. A sum of Rs.80,000/- was also given to Himalayan Audyogik Prashikshan Sansthan Jogipara Uttarkashi-N.G.O. whose Chairman and Deputy Chairman are Smt. Vijay Laxmi Thalwal and Purushottam Thalwal respectively. But, the applicants have not used the money in a proper manner. The applicants have embezzled the amount which was given to them for construction work. Even though, the work done by the applicants was not upto the mark. Thereafter, the charge was framed against the applicants and the proceedings were going on before the court below. On 17.12.2004 the Additional Secretary, Uttaranchal Government sent a letter to the District Magistrate, Uttarkashi that the State Government has decided to withdraw the prosecution against the applicants in criminal case No.110/2003. On this, the Government Counsel moved an application for withdrawal of criminal case No.110/2003 case crime No.22/1999 under section 406, 407, 467, 420, 468 I.P.C. But the learned Magistrate rejected the said application of the prosecution on the ground that the public interest has not been indicated under the aforesaid Government order as the charges had already been framed. Feeling aggrieved by this, the applicants preferred a revision before the Sessions Judge and the Sessions Judge has also rejected the revision. Feeling aggrieved by this, the applicants have come up before this Court.

4. The learned counsel for the applicants contended that the Government has already taken a decision to withdraw the case in the public interest, hence it is a fit case to be withdrawn. The State counsel moved an application to that effect before the court below. The

learned AGA also conceded that the case may be withdrawn.

5. It is well settled position of law that the power of the court under Section 321 Cr.P.C. is supervisory and it does not mean while exercising its power the consent has to be granted with regard to the withdrawal of the case. The court has to examine as to whether all the relevant aspects of the matter have been taken into consideration by the public prosecutor and only the application filed by the State Government in exercise of its executive functions. When such application is filed by the public prosecutor before the court after taking into account the material placed before him the court exercises its judicial discretion by considering such material and on such consideration either gives the consent to withdraw the case or decline the consent. The material placed by the public prosecutor must be set out in the application or in an affidavit annexed to the application should be placed before the court then the court is to give the consent as indicated under Section 321 Cr.P.C. It is also essential that the court must be satisfied that this material placed before it can reasonably come to the conclusion that the withdrawal of the prosecution by the public prosecutor will serve the public interest. It is the duty of the public prosecutor to weigh the material before placing in to the court and the court must be satisfied that the public prosecutor has considered the entire material in good faith to reach to the conclusion that the withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the court. In the present case, the learned trial court while declining the consent has not recorded any finding that the public prosecutor has not weighed the

evidence and considered all the aspects of the case. The learned trial court has not discussed any detail with regard to the material placed before it. As such, the learned trial court has erred in declining the permission to withdraw the case.

6. Therefore, the case is remitted back to the learned trial court to decide the same afresh in the light of the observations made above and the public prosecutor, if he has not placed the entire material, will place the same before the learned trial court and the learned court below on the basis of which will come to the conclusion as to whether the permission for withdrawal of the case is to be granted or not.

7. The petition is disposed of with the above observations.

(J. C. S. Rawat, J.)

Dated 10.8.2005

LSR